



## Virginia Department of Planning and Budget **Economic Impact Analysis**

---

**18 VAC 41-20 Barbering and Cosmetology Regulations**

**18 VAC 41-50 Tattooing Regulations**

**18 VAC 41-60 Body-Piercing Regulations**

**18 VAC 41-70 Esthetics Regulations**

**Department of Professional and Occupational Regulation**

**Town Hall Action/Stage: 6199/9946**

May 12, 2023

---

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB's best estimate of these economic impacts.<sup>1</sup>

### **Summary of the Proposed Amendments to Regulation**

Individuals who are licensed by the Board for Barbers and Cosmetology (Board) under a grandfathering provision, and who fail to renew their license within two years of its expiration, must apply for a new license and meet all current licensure requirements. The Board seeks to amend these requirements to let grandfathered licensees obtain a new license by demonstrating five years of experience instead of obtaining additional training.

### **Background**

Four of the Board's regulations contain the requirements for licensees who fail to renew their license within 30 days following its expiration date (i.e., Section 180 of 18 VAC 41-20 *Barbering and Cosmetology Regulations*, section 180 of 18 VAC 41-50 *Tattooing Regulations*, section 140 of 18 VAC 41-60 *Body-Piercing Regulations*, and section 160 of 18 VAC 41-70

---

<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

*Esthetics Regulations*, all titled “Failure to renew”).<sup>2</sup> These regulations state that licensees may apply to have their license “reinstated” within two years following the expiration date. To do so, they must submit a reinstatement application and renewal fee and reinstatement fee to the Department of Professional and Occupational Regulation (DPOR). However, all four regulations also state that reinstatement is no longer possible if the licensee “fails to renew the license within two years following the expiration date.” Once the license has lapsed, the former licensee must apply for licensure (or certification) as a new applicant and meet all current entry requirements for each respective license (or certificate) including training and taking any necessary examinations.

As new training requirements have been added over the years, some licensees have been “grandfathered” to exempt them from the new requirements and thereby prevent them from having to incur additional training costs; these grandfathering provisions are intended to reduce barriers to entry into the profession. However, as stated above, these licensees would have to meet current entry requirements if they wish to re-activate a lapsed license. DPOR reports that, “Meeting entry requirements requires additional training in a school or an apprenticeship. As a result, the practitioner is required to repeat numerous hours of training material they have already received training on.”<sup>3</sup> At the same time, non-grandfathered license holders who wish to re-activate a lapsed license are permitted to simply pay the application fees and retake the examination(s) without acquiring additional training. This implicitly places a greater burden on individuals who have been practicing longer.

Thus, the Board seeks to ease the requirements for individuals licensed under grandfathering provisions who wish to re-activate a lapsed license. In doing so, the Board would be addressing several complaints received from grandfathered practitioners who, after allowing their licenses to lapse, sought to re-activate their license but were told they first had to receive training. The proposed changes would allow individuals licensed under a grandfathering provision to submit a new application showing that they meet the requirements based on the grandfathering provisions, demonstrate five years of licensed experience, and pass required

---

<sup>2</sup> “Licensee” as used here includes “licensed or certified individual or business entity” in the *Barbering and Cosmetology Regulations*, licensed professionals or certified instructors (individuals) in the *Esthetics Regulations*, and licensed individuals in the other two chapters.

<sup>3</sup> See the Agency Background Document (ABD), page 3:  
[https://townhall.virginia.gov/l/GetFile.cfm?File=134\6199\9946\AgencyStatement\\_DPOR\\_9946\\_v3.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=134\6199\9946\AgencyStatement_DPOR_9946_v3.pdf).

examinations. Thus, individuals licensed under a grandfathering agreement would be able to avoid undertaking additional training hours and/or apprenticeships by instead demonstrating that they have five years of work experience. The specific grandfathering provisions that would be covered under each chapter are listed below.

- (i) 18 VAC 41-20 *Barbering and Cosmetology Regulations*: The proposed changes would add grandfathering provisions as found in section 54.1-703.1 of the Code of Virginia (Code), which contains provisions for wax technicians.<sup>4</sup> The proposed changes would also add three references to grandfathering provisions that no longer exist in the Code and are cited incorrectly. They currently appear in the text as “§54-83.2.b of the VA Code (1987), §54-112.15 of the VA Code (1970), §54.1-2.3.B of the VA Code (1992).” The agency reports that it is working with the Registrar to update and correct the citations to the grandfathering provisions.
- (ii) 18 VAC 41-50 *Tattooing Regulations*: The proposed changes would add grandfathering provisions as found in 18 VAC 41-50-20.A.6.<sup>5</sup>
- (iii) 18 VAC 41-60 *Body-Piercing Regulations*: The proposed changes would add grandfathering provisions as found in 18 VAC 41-60-20.A.6.<sup>6</sup>

---

<sup>4</sup> See <https://law.lis.virginia.gov/vacode/title54.1/chapter7/section54.1-703.1/>, which states that, “The Board shall waive the examination requirements for licensure as a wax technician for any individual who (i) makes application for licensure between July 1, 2002, and July 1, 2003; (ii) otherwise complies with Board regulations relating to moral turpitude; and (iii) meets any of the following conditions: 1. Has at least three years of documented work experience as a wax technician that is deemed satisfactory by the Board; 2. Has completed a training program that is deemed satisfactory by the Board; or 3. Holds an unexpired certificate of registration, certification, or license as a wax technician issued to him on the basis of comparable requirements by a proper authority of a state, territory, or possession of the United States or the District of Columbia.”

<sup>5</sup> <https://law.lis.virginia.gov/admincode/title18/agency41/chapter50/section20/> which states that, “6. Persons who (i) make application for licensure between October 1, 2006, and September 30, 2007; (ii) have completed three years of documented work experience within the preceding five years as a tattooer; and (iii) have completed a minimum of five hours of health education to include but not limited to bloodborne disease, sterilization, and aseptic techniques related to tattooing and first aid and CPR that is acceptable to the board are not required to complete subdivision 5 of this subsection.”

<sup>6</sup> <https://law.lis.virginia.gov/admincode/title18/agency41/chapter60/section20/> which states that, “6. Persons who (i) make application between April 1, 2007, and March 31, 2008; (ii) have completed three years of documented work experience within the preceding five years as a body piercer; and (iii) have completed a minimum of five hours of health education including but not limited to blood borne disease, sterilization, and aseptic techniques related to body piercing and first aid and CPR that is acceptable to the board are not required to complete subdivision 5 of this subsection.”

(iv) 18 VAC 41-70 *Esthetics Regulations*: The proposed changes would add grandfathering provisions as found in Code Section 54.1-703.3.<sup>7</sup>

### **Estimated Benefits and Costs**

DPOR reports that as of September 1, 2022, there are 798 licensees who obtained their license under a grandfathering provision, whose licenses have lapsed, and who would not be eligible for reinstatement. Although some of these individuals may have retired or left the profession permanently, any of them who seek to re-activate their license would benefit from the proposed changes by not having to undertake additional training. DPOR estimates that additional training fees could range from \$500-\$5,000. The proposed amendments would allow individuals with lapsed licenses who were originally licensed under a grandfathering provision to avoid these costs if they wish to re-activate their license.

The proposed amendments would also benefit individuals who currently hold active licenses that were obtained under a grandfathering provision, who may, in the future, let their license lapse and subsequently seek to re-activate their license. Those individuals would also benefit from not having to incur additional training costs, which may have increased over time.

Lastly, DPOR also reports that there are approximately 1,145 salons, shops, and spas that would indirectly benefit from the proposed changes by being able to hire licensees returning to the workplace. This would be especially helpful if these businesses are currently experiencing difficulty hiring licensed professionals.

### **Businesses and Other Entities Affected**

As mentioned previously, the proposed amendments would benefit individuals licensed under a grandfathering provision whose licenses have lapsed as well as those who may later let their license lapse. The proposed amendments would also indirectly benefit the roughly 1,145 salons, shops, and spas that may seek to employ these individuals.

---

<sup>7</sup> <https://law.lis.virginia.gov/vacode/title54.1/chapter7/section54.1-703.3/> which states that, The Board shall waive the examination requirements for licensure as an esthetician or master esthetician for any individual who (i) makes application for licensure by July 31, 2009; (ii) otherwise complies with Board regulations relating to moral turpitude; and (iii) meets any of the following conditions: 1. Has at least three years of documented work experience as an esthetician or a master esthetician completed prior to July 1, 2008, that is deemed satisfactory by the Board; 2. Has completed a training program prior to July 1, 2008, that is deemed satisfactory by the Board; or 3. Holds an unexpired certificate of registration, certification, or license as an esthetician or a master esthetician issued to him prior to July 1, 2008, on the basis of comparable requirements by a proper authority of a state, territory, or possession of the United States, or the District of Columbia.”

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>8</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Since the proposed amendments would not result in an increase in net costs for any entity, an adverse impact is not indicated.

### **Small Businesses<sup>9</sup> Affected:<sup>10</sup>**

#### Types and Estimated Number of Small Businesses Affected

DPOR reports that all 1,145 salons, shops, and spas that may employ individuals impacted by the proposed changes are likely to be small businesses.

#### Costs and Other Effects

The proposed amendments would not create any new costs for small businesses. These businesses would benefit to the extent that the proposed changes would make it easier for them to hire experienced licensed professionals.

#### Alternative Method that Minimizes Adverse Impact

No adverse impact is indicated; thus, no alternatives are necessary.

### **Localities<sup>11</sup> Affected<sup>12</sup>**

The proposed amendments do not disproportionately affect any particular localities or create costs for local governments.

---

<sup>8</sup> Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>9</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

<sup>10</sup> If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>11</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>12</sup> Code § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

**Projected Impact on Employment**

The proposed amendments are intended to reduce barriers to re-entry for certain professionals with lapsed licenses. Thus, to the extent that individuals who were licensed under a grandfathering provision choose to re-activate their license, employment in barbering, cosmetology, tattooing, body-piercing, and esthetics may increase. However, the proposed amendments are unlikely to significantly affect total employment.

**Effects on the Use and Value of Private Property**

The proposed amendments are unlikely to affect the value of private property. Real estate development costs would not be affected.